IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

Bail Appl..No. 4435 of 2007()

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CRIME NO.399/06 OF WADAKKANCHERY POLICE STATION

PETITIONER/ACCUSED

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AJESH VISWANATHAN (23),
S/O.VISWANATHAN, POOVATHIKAL HOUSE,
MULANGUNATHUKAVU P.O.,
THRISSUR DISTRICT.

BY ADV. SRI.N.KRISHNANKUTTY PILLAI

RESPONDENTS: RESPONDENTS

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1. KERALA STATE REPRESENTED BY THE
GOVERNMENT PLEADER, AG'S OFFICE, ERNAKULAM.

2. THE CIRCLE INSPECTOR OF POLICE,
WADAKKANCHERRY CIRCLE, WADAKKANCHERRY,
THRISSUR DISTRICT.

3. THE SUB INSPECTOR OF POLICE,
WADAKKANCHERRY P.S., THRISSUR DISTRICT.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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**B.A. NO. 4435 OF 2007**

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Dated this the 24th day of July, 2007

**ORDER**

Second application for anticipatory bail. The petitioner is the 1st accused. He faces allegations under Secs.394 and 326 of the IPC. The alleged incident took place on 3/10/06. The de facto complainant was allegedly attacked and robbed of an amount of Rs.1 lakh which was available in his purse. After consuming liquor at a bar, the de facto complainant was proceeding on his motor-cycle towards his house. En route, he stopped in front of a shop. There, two persons also had come on a motor-cycle. It is the case of the de facto complainant that deliberately and without any provocation, an incident was created where the de facto complainant was assaulted by the accused persons. He suffered fracture of the nasal bone and mandible. An amount of Rs.1 lakh which was available in his purse was taken away when it fell in the course of the incident. A crime was promptly registered. Accused are not named in

the F.I.R. Investigation commenced. On 9/10/06, the petitioner has been arrayed as an accused in the crime. Investigation is in progress.

2. The petitioner came to this Court with an application for anticipatory bail. By order dated 6/2/07, that application was dismissed with the observation that the petitioner must surrender before the Investigating Officer between 7/2/07 and 9/2/07 for the purpose of custodial interrogation and recovery of incriminating materials, if any. It was directed that the petitioner must be produced before the learned Magistrate on the same day and the learned Magistrate must consider the bail application and pass appropriate orders.

3. The petitioner did not appear before the Investigating Officer. He has not chosen to appear before the learned Magistrate also till now. He has now come before this Court with a renewed prayer for anticipatory bail. In the meantime, the 2nd accused had come before this Court for anticipatory bail and another Bench of this Court as per the order dated 23/5/07 had dismissed the said application with observations. It is submitted at the Bar that the 2nd accused has later been enlarged on regular bail.

4. The learned counsel for the petitioner submits that the

petitioner is absolutely innocent. He has no criminal antecedents at all. The allegation of theft/robbery is being made without any basis. Even going by the allegations, only an offence under Sec.325 of the IPC and not Sec.326 of the IPC is made out. The said offence is bailable. Exaggerated allegations are raised with ulterior motive. In these circumstances, it is prayed that anticipatory bail can be granted to the petitioner.

5. The learned Public Prosecutor opposes the application. The petitioner has got to be interrogated. Attempt must be made to recover the property of the de facto complainant - robbed/thieved by the accused. The petitioner is not entitled to seek anticipatory bail again. His application having been dismissed with observations on 6/2/07 and the petitioner having not complied with the directions therein, no new circumstance exists justifying a re-consideration of the prayer for grant of anticipatory bail, submits the learned Public Prosecutor.

6. I have considered all the relevant inputs. I find merit in the opposition by the learned Public Prosecutor. Of course, I agree with the learned counsel for the petitioner that the allegation under Sec.325 of the IPC does appear to be the more appropriate section of offence; but it remains that there is an

allegation under Sec.394 of the IPC. Though the petitioner's counsel contends that political animosity has prompted the de facto complainant to make such allegations and the police to swallow those allegations, there is absolutely nothing to indicate that there was any animosity on the basis of political affiliation between the petitioner and the de facto complainant. Even admittedly, they are strangers. I am, in these circumstances, of opinion that this is not a fit case where the extraordinary equitable discretion under Sec.438 can or deserves to be invoked. The petitioner must surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then apply for regular bail in the ordinary course. I have no reason to assume that the Investigating Officer or the learned Magistrate will not follow the procedure prescribed by law in the event of such arrest/surrender.

7. This bail application is, in these circumstances, dismissed.

**Sd/-**

**(R. BASANT, JUDGE)**

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**//true copy// P.S. To Judge**